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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/038,818 | 12/31/2001 | Robert L. Popp | KCC 4771 | 9058 |
| 321 | 7590 | 11/02/2006 | EXAMINER | |
| | | | ART UNIT | PAPER NUMBER |

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|--|-------------------------------------|-------------------------|
| Notification of Non-Compliant Appeal Brief (37 CFR 41.37) | Application No. | Applicant(s) |
| | 10/038,818 | POPP ET AL. |
| | Examiner Karin M. Reichle | Art Unit 3761 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on _____ is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH OR THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. Other (including any explanation in support of the above items):

As per the BPAI order of 10-24-06, a copy of which is attached, the Brief does not include a Summary of claimed subject matter section which "maps the claimed invention to the independent claims".

Karin M. Reichle
Primary Examiner
Art Unit: 3761



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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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10-038-818

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| EXAMINER |
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| ART UNIT | PAPER |
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20061028

DATE MAILED:

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Commissioner for Patents

see attached communication

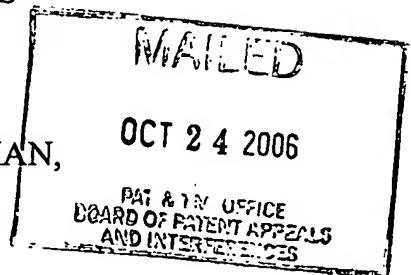
encl: copy of 10-24-06 BPAI Order

Karin M. Reichle
Primary Examiner
Art Unit: 3761

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT L. POPP, MICHAEL T. MORMAN,
PAUL VANGOMPEL, PAUL M. LINKER,
and DEBRA DURRANCE



Application No. 10/038,818

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on September 1, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below:

On February 3, 2006, appellants filed an Appeal Brief. A review of the file reveals that the Summary of Claimed Subject Matter does not map the claimed invention to the independent claims as set forth in 37 CFR § 41.37(c)(1)(v) which states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of February 3, 2006 defective;
- 2) request applicant to file a Substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for the examiner to consider the substitute Appeal Brief, and if necessary, vacate the Examiner's Answer mailed April 19, 2006, and issue a revised Examiner's Answer in accordance with the new rules effective September 13, 2004;

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- 4) have a complete copy of the substitute Appeal Brief and any subsequent Examiner's Answer scanned into the record; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: G.P. Edgell for Dale Shaw
DALE M. SHAW
Deputy Chief Appeal Administrator
(571) 272-9797

DMS/dal

Application No. 10/038,818

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